IN THE HIGH COURT OF JUDICATURE OF BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 814 of 1997

Dr.Mahendra C. Shah & ors. .. Petitioners

versus

Union of India & Ors. .. Respondents

...

Mr.Ranjit Shetty i/b M/s.Shah Desai Doijode and Phatarphekar for the petitioners.

Mr.V.Y. Sanglikar for respondent no.2.

CORAM : S.B. MHASE, AND

D.G. KARNIK, JJ

DATED : 21st February 2006.

P.C.:

1. Heard.

2. By this petition, the petitioner challenges the order dated 31st July 1996 passed under section 7

of the Public Premises (Eviction of Unauthorised Occupants Act 1971 (for short "Public Premises Eviction Act") and also the order dated 27th November 1996 dismissing the appeal against that order.

2. The proceedings for eviction of the petitioners were instituted by the respondent no.2 in the year 1992. After recording the evidence and hearing the parties an order of eviction was passed against the petitioners on 3rd December 1993 in case No.13 and 13A of 1992 by the Estate Officer.

3. Aggrieved petitioners filed an appeal against the said order and the said appeal bearing Misc. Appeal No.16 of 1994 was dismissed by the City Civil Court by an order dated 7th March 1995. On decision of the said appeal, the petitioners challenged the order of eviction and the order passed in appeal confirming the order of eviction by challenging the constitutional validity of the Public Premises Act by filing Writ Petition no. 1068 of 1995 on the Original Side of this Court. Rule was issued in the said Writ Petition. However, by an order dated 5th September 2001, Writ Petition has been dismissed in default. Consequently, the order of eviction passed against the petitioners

has become final.

4. In the meanwhile, respondent no.2 requested the Estate Officer - respondent no.3 herein - to determine the amount of compensation for the period of unauthorised occupation by the petitioner. By an order dated 31st July 1996, the respondent no.3 determined the amount of compensation for unauthorised occupation. The petitioner challenged the said order by filing an appeal bearing Misc. Appeal no.143 of 1996 in the City Civil Court, Mumbai. By an order dated 10th September 1996, the appeal filed by the petitioners were admitted by City Civil Court subject to the condition that the petitioner should deposit in the Court a sum of Rs.1,50,000/- within a period of three weeks. That order of deposit was not complied with. Hence, by an order dated 27th November 1996, the City Civil Court dismissed the appeal. That order is impugned in this Writ Petition.

6. As stated earlier, the order of eviction was challenged by the petitioners by filing an appeal in the City Civil Court which dismissed the appeal. The Writ Petition no.1068 of 1995 challenging the order in appeal has been dismissed. On dismissal of the said

Writ Petition, the order of eviction has become final. The order of determination of the compensation for the period of unauthorised occupation is only a consequential order consequent upon the holding that the petitioners were the unauthorised occupants. After giving an opportunity to the petitioners of being heard, the compensation amount has been determined. The determination of the amount of compensation is principally a question of fact. An appeal against the said order is dismissed. No perversity is shown in the finding of fact recorded by the Estate Officer in determining the amount of compensation. The condition for admission to the appeal subject on deposit of the part of the amount was not complied with by the petitioner. The City Civil Court was therefore right in dismissing the appeal for failure to observe the condition.

7. No error can be found in the said order. Consequently, Writ Petition is dismissed. Rule is discharged with costs.

(D.G. KARNIK, J) **(S.B. MHASE, J)**